

HOUSE BILL NO. 579

INTRODUCED BY N. WILSON

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE TAXATION OF VAPOR PRODUCTS; DEFINING "VAPOR PRODUCT"; PROVIDING THAT THE TAX ON VAPOR PRODUCTS IS BASED ON THE WEIGHT OF NICOTINE PER MILLILITER OF FLUID; REQUIRING THAT THE INVOICE FOR A VAPOR PRODUCT CONTAIN THE WEIGHT OF NICOTINE PER MILLILITER OF FLUID; AND AMENDING SECTIONS 16-11-102 AND 16-11-111, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 16-11-102, MCA, is amended to read:

**"16-11-102. Definitions.** (1) As used in this chapter, the following definitions apply, unless the context requires otherwise:

- (a) "Contraband" means:
  - (i) any tobacco product possessed, sold, offered for sale, distributed, held, owned, acquired, transported, imported, or caused to be imported in violation of this part;
  - (ii) any cigarette or roll-your-own tobacco that is possessed, sold, offered for sale, distributed, held, owned, acquired, transported, imported, or caused to be imported in violation of part 4 or part 5;
  - (iii) any cigarettes that bear trademarks that are counterfeit under state or federal trademark laws;
  - (iv) any cigarettes bearing false or counterfeit insignia or tax stamps from any state; or
  - (v) any cigarettes or tobacco products that violate 16-10-306.

(b) "Department" means the department of revenue provided for in 2-15-1301.

(c) "Person" means an individual, firm, partnership, corporation, association, company, committee, other group or persons, or other business entity, however formed.

(2) As used in this part, the following definitions apply, unless the context requires otherwise:

(a) "Cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains:

- (i) any roll of tobacco wrapped in paper or in any substance not containing tobacco;
- (ii) tobacco, in any form, that is functional in the product and that, because of its appearance, the type



1 of tobacco used in the filler, or its packaging and labeling, is likely to be offered to or purchased by consumers  
2 as a cigarette; or

3 (iii) any roll of tobacco wrapped in any substance containing tobacco that, because of its appearance or  
4 the type of tobacco used in the filler and regardless of its packaging and labeling, is likely to be offered to or  
5 purchased by consumers as a cigarette described in subsection (2)(a)(i).

6 (b) "Consumable material" means any liquid nicotine solution or other material containing nicotine that  
7 is depleted as a vapor product is used.

8 ~~(b)~~(c) "Controlling person" means a person who owns an equity interest of 10% or more of a business  
9 or the equivalent.

10 ~~(e)~~(d) "Directory" means the tobacco product directory as provided in 16-11-504.

11 ~~(d)~~(e) "Full face value of insignia" means the total amount of the tax levied under this part.

12 ~~(e)~~(f) "Insignia" or "indicia" means the impression, mark, or stamp approved by the department under  
13 the provisions of this part.

14 ~~(f)~~(g) "Licensed retailer" means any person, other than a wholesaler, subjobber, or tobacco product  
15 vendor, who is licensed under the provisions of this part.

16 ~~(g)~~(h) "Licensed subjobber" means a subjobber licensed under the provisions of this part. The person  
17 must be treated as a wholesaler.

18 ~~(h)~~(i) "Licensed wholesaler" means a wholesaler licensed under the provisions of this part.

19 ~~(i)~~(j) "Manufacturer" means any person who fabricates tobacco products from raw materials for the  
20 purpose of resale.

21 ~~(j)~~(k) "Manufacturer's original container" means the original master shipping case or original shipping  
22 case used by the tobacco product manufacturer to ship multipack units, such as boxes, cartons, and sleeves, to  
23 warehouse distribution points.

24 ~~(k)~~(l) "Moist snuff" means any finely cut, ground, or powdered tobacco, other than dry snuff, that is  
25 intended to be placed in the oral cavity.

26 ~~(l)~~(m) "Record" means an original document, a legible facsimile, or an electronically preserved copy.

27 ~~(m)~~(n) "Retailer" means a person, other than a wholesaler, who is engaged in the business of selling  
28 tobacco products to the ultimate consumer. The term includes a person who operates fewer than 10 tobacco  
29 product vending machines.

30 ~~(n)~~(o) "Roll-your-own tobacco" means any tobacco that, because of its appearance, type, packaging,

1 or labeling, is suitable for use and likely to be offered to or purchased by consumers as tobacco for making  
2 cigarettes.

3 ~~(p)~~(p) "Sale" or "sell" means any transfer of tobacco products for consideration, exchange, barter, gift,  
4 offer for sale, or distribution in any manner or by any means.

5 ~~(p)~~(q) "Sole distributor" means a person who either causes a unique brand of tobacco products to be  
6 manufactured according to distinctive specifications and acts as the exclusive distributor of the tobacco products  
7 or is the exclusive distributor of a brand of tobacco products within the continental United States.

8 ~~(r)~~(r) "Subjobber" means a person who purchases from a licensed wholesaler cigarettes with the  
9 Montana cigarette tax insignia affixed and sells or offers to sell tobacco products to a licensed retailer or tobacco  
10 product vendor. An isolated sale or exchange of cigarettes between licensed retailers does not constitute those  
11 retailers as subjobbers.

12 ~~(s)~~(s) "Tobacco product" means cigarettes and all other products containing tobacco that are intended  
13 for human consumption or use, including vapor products.

14 ~~(t)~~(t) (i) "Tobacco product vendor" means a person doing business in the state who purchases tobacco  
15 products through a wholesaler, subjobber, or retailer for 10 or more tobacco product vending machines that the  
16 person operates for a profit in premises or locations other than the person's own.

17 (ii) A tobacco product vendor must be treated as a wholesaler.

18 (u) "Vapor product" means a noncombustible product containing nicotine, such as an electronic cigarette,  
19 that uses a mechanical heating element, battery, or electronic circuit, regardless of shape or size, that can be  
20 used to produce vapor from a liquid nicotine solution. The term includes any vapor cartridge or other container  
21 of nicotine in a solution or other form that is intended to be used with or in a vapor product, but does not include  
22 any product regulated by the United States food and drug administration under Chapter V of the Federal Food,  
23 Drug, and Cosmetic Act.

24 ~~(v)~~(v) "Wholesale price" means the established price for which a manufacturer sells a tobacco product  
25 to a wholesaler or any other person before any discount or reduction.

26 ~~(w)~~(w) "Wholesaler" means a person who:

27 (i) purchases tobacco products from a manufacturer for the purpose of selling tobacco products to  
28 subjobbers, tobacco product vendors, wholesalers, or retailers; or

29 (ii) purchases tobacco products from a sole distributor, another wholesaler, or any other person for the  
30 purpose of selling tobacco products to subjobbers, tobacco product vendors, wholesalers, or retailers."

1

2           **Section 2.** Section 16-11-111, MCA, is amended to read:

3           **"16-11-111. Cigarette, tobacco products, and moist snuff sales tax -- exemption for sale to tribal**

4 **member.** (1) (a) A tax on the purchase of cigarettes for consumption, use, or any purpose other than resale in

5 the regular course of business is imposed and must be precollected by the wholesaler and paid to the state of

6 Montana. The tax is \$1.70 on each package containing 20 cigarettes. Whenever packages contain other than

7 20 cigarettes, there is a tax on each cigarette equal to 1/20 the tax on a package containing 20 cigarettes.

8           (b) The tax computed under subsection (1)(a) applies to illegally packaged cigarettes under 16-11-307.

9           (2) The tax imposed in subsection (1) does not apply to quota cigarettes.

10           (3) Subject to the refund or credit provided in subsection (4), the tax must be precollected on all

11 cigarettes entering a Montana Indian reservation.

12           (4) Pursuant to the procedure provided in subsection (5), a wholesaler making a sale of cigarettes to a

13 retailer within the boundaries of a Montana Indian reservation may apply to the department for a refund or credit

14 for taxes precollected on cigarettes sold by the retailer to a member of the federally recognized Indian tribe or

15 tribes on whose reservation the sale is made. A wholesaler who does not file a claim within 1 year of the shipment

16 date forfeits the refund or credit.

17           (5) The distribution of tax-free cigarettes to a tribal member must be implemented through a system of

18 preapproved wholesaler shipments. A licensed Montana wholesaler shall contact the department for approval

19 prior to the shipment of the untaxed cigarettes. The department may authorize sales based on whether the quota,

20 as established in a cooperative agreement between the department and an Indian tribe or as set out in this

21 chapter, has been met. If authorized as a tax-exempt sale, the wholesaler, upon providing proof of order and

22 delivery to a retailer within the boundaries of a Montana Indian reservation selling cigarettes to members of a

23 federally recognized tribe or tribes of that reservation, must be given a refund or credit. Once the quota has been

24 filled, the department shall immediately notify all affected wholesalers that further sales on that reservation must

25 be taxed and that a claim for a refund or credit will not be honored for the remainder of the quota period. Quota

26 allocations are not transferable between quota periods or between reservations.

27           (6) The total amount of refunds or credits allowed by the department to all wholesalers claiming the

28 refund or credit under subsection (4) for any month may not exceed an amount that is equal to the tax due on the

29 quota allocation. The department shall determine the amount of refunds or credits for each Indian reservation at

30 the beginning of each fiscal year, using the most recent census data available from the bureau of Indian affairs

1 or as provided in a cooperative agreement with the tribe or tribes of the Indian reservation.

2 (7) (a) There must be collected and paid to the state of Montana a tax of 50% of the wholesale price, to  
3 the wholesaler, of all tobacco products other than cigarettes, vapor products, and moist snuff.

4 (b) The tax on moist snuff is 85 cents an ounce based upon the net weight of the package listed by the  
5 manufacturer. For packages of moist snuff that are less than or greater than 1 ounce, the tax must be proportional  
6 to the size of the package. ~~Tobacco products shipped from Montana and destined for retail sale and consumption~~  
7 ~~outside the state are not subject to this tax.~~

8 (c) (i) The tax on vapor products is based on the weight in milligrams of the nicotine in the consumable  
9 material of the vapor product and the amount in milliliters of consumable material contained in the vapor product  
10 purchased. The amount of the tax is 0.0173 cent per milligram of nicotine in the consumable material of the vapor  
11 product for each milliliter of consumable material contained in the vapor product.

12 (ii) All invoices for vapor products must include the actual weight in milligrams of nicotine per milliliter of  
13 fluid and the actual amount in milliliters of the consumable material contained in vapor products.

14 (d) Tobacco products shipped from Montana and destined for retail sale and consumption outside the  
15 state are not subject to the tax provided for in this section.

16 (8) The tax imposed by subsection (7) must be precollected and paid by a wholesaler to the department  
17 upon sale to a Montana retailer. A wholesaler who fails to report or pay the tax required by this part must be  
18 assessed penalty and interest as provided in 15-1-216.

19 (9) A retailer who purchases tobacco products for resale on which the tobacco products tax has not been  
20 collected and paid to the department shall comply with all the provisions of this part and the rules adopted to  
21 implement this part as if it were a wholesaler.

22 (10) A retailer must assume that the tobacco products tax has not been collected and paid to the  
23 department in the absence of a statement on the retailer's invoice or sales slip for the tobacco products that states  
24 that the applicable Montana tobacco products tax is included in the total billing cost."

25 - END -